CF0000061990

(2)

Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CR. APPEAL NO. 203 OF 1999

1. Fandi alias Santosh son of Radheshyam Satnami, aged 19 years, resident of Sarora Patti No.1, P.S.Simga, District Raipur, M.P.

2. Johan son of Shyamlal Satnami, aged 45 years, resident of village Kathiya, P.S.Bemetara, District Durg, MP.

.. APPELLANTS

(IN JAIL)

1331
Filed on 19-1-99
by Shri S. Dutt
Advocate

VS.

Rka. A.R.

THE STATE OF MADHYA PRADESH .. RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE:

(24)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 203 OF 1999

Appellants.: 1. Fandi alias Santosh
(In Jail) Son of Radheshyam Satnami, aged 19 years, resident of Sarora Patti No.1, P.S. Simga, District Raipur (M.P).

2. Johan, son of Shyamlal Satnami aged 45 years, resident of village Kathiya, P.S. Bemetara, District Durg M.P.

-Vs.-

RESPONDENT : The State of Madhya Pradesh.

(Criminal Appeal under Section 374 (2) of the Criminal Procedure Code)

Appearance :
Shri Gautam Khetrapal, counsel for the appellants.
Shri Arun Sao, Govt. Advocate for the State.

ORAL JUDGMENT

(18.05.2007)

Sunil Kumar Sinha, J. :

Heard.

(2) This appeal is directed against the judgment of conviction and order of sentence dated 15th January, 1999 passed by the First Additional Sessions Judge, Baloda Bazar, District Raipur in S.T. No.325/1997, whereby, the said Court after holding the accused/ appellants guilty for commission of offence under Sections 363 and 366 of I.P.C. sentenced each of the accused to undergo R.I. for 3 years and

to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months and to undergo R.I. for 3 years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months, respectively. In addition to that, accused- appellant Fandi @ Santosh has also been convicted under Section 376 (1) of I.P.C. and sentenced to undergo R.I. for 7 years and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year. It was further directed that all the sentences would run concurrently.

(3) At the very outset , learned counsel for the appellants submits that appellant No.1 Fandi @ Santosh has been released from jail on 17-01-2003 on account of getting special remission, therefore, he is not pressing his appeal and the same be dismissed as not pressed. Consequently, the appeal of appellant No.1 Fandi @ Santosh is dismissed as not pressed.

(4) The judgment is being delivered on the appeal of appellant No.2, namely, Johan.

(5) Brief facts are that, another co-accused Shyamlal abducted the prosecutrix, namely, Ku. Durgeshwari Bai (PW-7), who was below 18 years of age, with an intention to compel her to marry with co-accused Fandi @ Santosh, appellant No.1 herein. The allegation is that accused Shyamlal took the prosecutrix on his bicycle to the house of appellant No.2 Johan i.e. from village Sarora Patti No.1 to village Kathiya, where she was kept for four days. Further allegation is that in between this period, the girl was subjected to forceful sexual intercourse by appellant No.1 Fandi @ Santosh.

(6) The conviction of appellant No.2 Johan is based on the ground that the prosecutrix was kept in his house for four days and since he has not resisted such act of the other co-accused persons, he was also responsible for commission of offence punishable under Sections 363 and 366 of I.P.C.

(7) Learned counsel for the appellants argues that after going through the entire case of the prosecution, it nowhere comes that when co-accused Shyamlal took the prosecutrix to the house of appellant No.2 Johan in village Kathiya and put her there for 4 days, this appellant was present in the house, therefore, no offence under Section 363 or 366 of I.P.C. would be made out.

(8) On the other hand, learned counsel for the State opposes this argument. He supports the judgment of the trial Court.

(9) I have heard learned counsel for the parties and have also perused the record of the Sessions case.

(10) Sections 363 and 366 of I.P.C. are quoted as under:

> "**363. Punishment for kidnapping** – whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
>
> **366. Kidnapping, abducting or inducing woman to compel her marriage, etc.** – whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit

(27)

> intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid. "

(11) If we examine the evidence of the prosecutrix in light of the above provisions of the I.P.C., it would appear that the prosecutrix and other witnesses have not stated that during the course of stay of the prosecutrix in the house of appellant No.2 Johan, he was present in his house or in any manner received the custody of the prosecutrix or participated or added to kidnapping or abducting the prosecutrix or the prosecutrix was kept in his house under his knowledge. P.W.-7 Durgeshwari Bai deposes that she knows all the accused persons. On the fateful day, when she has gone out of her house to answer the call of nature, co-accused Shyamlal took her on his bicycle to the house of appellant No.2 Johan at village Kathiya. After two days, Fandi @ Santosh came there, who stayed with her for two days and on both the days he committed sexual intercourse against her will. Thereafter, somehow she managed to escape from the house of this appellant. She has not deposed a single word regarding presence of this appellant during her stay in his house.

(12) In light of the above evidence and also in light of the evidence of other witnesses, it does not appear on record that appellant No.2 Johan

(28)

in any manner had participated either in commission of kidnapping of the girl or after her kidnapping he participated in compelling her for marriage, thereby adding to commission of offence punishable under Sections 363 and 366 of I.P.C.

(13) In the result, the appeal of appellant No.2 Johan is allowed. The conviction and sentence awarded by the trial Court against appellant No.2 Johan, S/o Shyamlal Satnami are set aside. He is acquitted of the charges framed against him.

Sd/-
Sunil Kumar Sinha
Judge

Sibbu